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IN THE

Supreme Court of the United States

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No. 1011

October Term, 1945.

JOHN P. HUDOCK, Executor of the Estate of Michael G.
Hudock, Deceased,

Petitioner,

v.

WILLIAM C. FREEMAN, Secretary of Banking of the Com-
monwealth of Pennsylvania, Receiver of Pennsylvania
Liberty Bank and Trust Company,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, AND BRIEF IN SUPPORT THEREOF.

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No. . October Term, 1945.

JOHN P. HUDOCK, EXECUTOR OF THE ESTATE OF MICHAEL
G. HUDOCK, DECEASED,

Petitioner,

v.

WILLIAM C. FREEMAN, SECRETARY OF BANKING OF THE
COMMONWEALTH OF PENNSYLVANIA, RECEIVER OF PENN-
SYLVANIA LIBERTY BANK AND TRUST COMPANY,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF PENNSYLVANIA.**

*To the Honorable the Chief Justice and the Associate Jus-
tices of the Supreme Court of the United States:*

Your petitioner respectfully prays that a writ of cer-
tiorari issue to review the judgment of the Supreme Court
of Pennsylvania entered in the above entitled matter on
January 7, 1946 (R. 51-55), which judgment affirmed the
judgment of the Court of Common Pleas of Luzerne County,
Pennsylvania, in favor of the respondent and against the
petitioner in the sum of \$2,132.42 with interest from Octo-
ber 30, 1941 (R. 43-46); and shows to this Honorable Court:

**I. SUMMARY STATEMENT OF THE MATTER
INVOLVED.**

The present action at law was brought by the respond-
ent to recover a stock assessment levied against your peti-
tioner as a shareholder of Pennsylvania Liberty Bank and
Trust Company (R. 6-29).

On and before January 13, 1930, Pennsylvania Bank and Trust Company was a solvent state bank, incorporated under the Pennsylvania Act of May 13, 1876, P. L. 161 (7 PS 71) with a capital stock of \$200,000., divided into 2000 shares of the par value of \$100.00 each (R. 6-8). It possessed trust powers under the Pennsylvania Act of July 17, 1919, P. L. 1032 (R. 8). Its shareholders were individually responsible for its debts to the amount of the par value of their stock in addition to the par value of the shares, because Section 5 of the 1876 Act provided

“The shareholders of any corporation formed under this act shall be individually responsible, equally and ratably, but not one for the other, for all contracts, debts and engagements of such corporation to the amount of their stock therein at the par value thereof in addition to the par value of such shares.”

On and before January 13, 1930, Liberty State Bank and Trust Company was a solvent title insurance and trust company, incorporated under the Pennsylvania Act of April 29, 1874, P. L. 73, and its amendments and supplements (15 PS 1) with a capital stock of \$250,000., divided into 5000 shares of the par value of \$50.00 each (R. 9-11). It acquired banking powers by taking over the dissolved The Liberty State Bank of Wilkes-Barre, Pa., and by accepting the provisions of the Pennsylvania Act of May 9, 1889, P. L. 159 and its amendments and supplements, including the Act of May 9, 1923, P. L. 173 (R. 10-12). Its shareholders were not individually responsible for its debts, because Section 24 of the 1874 Act provided

“That the officers and stockholders of corporations organized under or accepting the provisions of this act shall not be individually liable for the debts of said corporation otherwise than in this (sic) provided.”

On January 13, 1930, Pennsylvania Bank and Trust Company and Liberty State Bank and Trust Company con-

solidated into Pennsylvania Liberty Bank and Trust Company in pursuance of the Pennsylvania Act of May 3, 1909, P L. 408 (15 PS 421) with a capital stock of \$325,000., divided into 13,000 shares of a par value of \$25.00 each (R. 14-15). Section 3 of the 1909 Act (15 PS 421) provides in pertinent part:

“Upon the filing of said certificate and agreement . . . and upon the issuing of new Letters Patent . . . the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges and franchises theretofore vested in each of them; . . . provided that all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it.”

Pursuant to the consolidation agreement 8000 shares were exchanged and distributed to the shareholders of Pennsylvania Bank and Trust Company in the proportion of four shares of new stock for one share of old stock, and 5000 shares were exchanged and distributed to the shareholders of Liberty State Bank and Trust Company in the proportion of one share of new stock for one share of old stock (R. 15). Your petitioner is the holder of 125 shares of stock of the Pennsylvania Liberty Bank and Trust Company received in exchange for 125 shares of Liberty State Bank and Trust Company (R. 29).

From and after January 13, 1930 and until September 21, 1931, Pennsylvania Liberty Bank and Trust Company conducted the business of banking as well as that of a title insurance and trust company (R. 15-16). On September 21, 1931 the Secretary of Banking of the Commonwealth of Pennsylvania took possession of the business and property of Pennsylvania Liberty Bank and Trust Company and thereafter determined to liquidate its affairs (R. 16-17). On January 9, 1937 an assessment of \$325,000., at the rate of \$25.00 per share, being the full par value of each share, was levied upon all the shareholders of Pennsylvania Liberty Bank and Trust Company (R. 17-18). Your petitioner was duly notified of an assessment in the sum of \$3125.00 upon his 125 shares of stock (R. 18).

On March 20, 1944 the Supreme Court of Pennsylvania in the suit of William C. Freeman, Secretary of Banking of the Commonwealth of Pennsylvania, Receiver of *Pennsylvania Liberty Bank and Trust Company, v. Joseph M. Hiznay and Victor Lee Dodson to No. 183*, January Term, 1943, reported in 349 Pennsylvania State Reports pages 89 et seq., reduced the aggregate amount of the stock assessment from \$325,000. to \$200,000., and determined that all the shareholders were liable therefor at the rate of \$15.3846 per share (R. 18-19). On this revised basis the stock assessment upon the 125 shares held by your petitioner was reduced to \$1923.07 (R. 29).

Upon the failure of your petitioner to pay the stock assessment, the present assumpsit action for its recovery was instituted on November 23, 1942 (R. 1). The primary defense of your petitioner to that action was that the levying and collection of such an assessment from your petitioner and those other shareholders of the Pennsylvania Liberty Bank and Trust Company, who had previously been shareholders of the Liberty State Bank and Trust Company and who under Section 24 of the 1874 Act were not subject to individual liability for its corporate debts, was without legislative authority and in violation of the 14th Amendment

to the Constitution of the United States (R. 30-39). In making absolute a rule for judgment against your petitioner for want of a sufficient affidavit of defense, the trial court concluded that it was bound by the previous decision of the Supreme Court of Pennsylvania in the case of **Freeman etc., v. Hiznay et al.**, 349 Pa. 89 (1944) upholding the validity of the assessment. It also ruled that the contention that the stock assessment deprived your petitioner and those other former shareholders of the constituent Liberty State Bank and Trust Company of their property without due process in violation of the 14th Amendment to the Constitution of the United States was an argument to be presented only to an appellate court (R. 43-45).

On appeal to the Supreme Court of Pennsylvania the judgment against your petitioner was affirmed in an opinion by Mr. Justice Horace Stern, dated January 7, 1946, and reported in **353 Pa. 345, 1946** (R. 51-56). That opinion reaffirmed the **Hiznay** case with the correction that the power of the new consolidated corporation to carry on the business of banking, which power the **Hiznay** case (349 Pa. 89, 96) had erroneously stated came only from the constituent Pennsylvania Bank and Trust Company, was actually derived from both constituent corporations, that is from the Pennsylvania Bank and Trust Company by reason of the Act of May 13, 1876, P. L. 161, and also from the Liberty State Bank and Trust Company by reason of the Act of May 9, 1923, P. L. 173 (R. 53). Mr. Justice Stern held that your petitioner could not successfully contend that he had been unduly deprived of a property right or denied the equal protection of the laws because he had entered of his own accord into a corporate organization (i. e., Pennsylvania Liberty Bank and Trust Company) and thereby knew or under the law was bound to know he had assumed a stockholder's liability from which he had been previously absolved as a shareholder of Liberty State Bank and Trust Company (R. 54).

II. STATEMENT DISCLOSING BASIS OF JURISDICTION TO REVIEW.

The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 344).

The Pennsylvania statutes involved are the following:

(a) Section 24 of the Act of April 29, 1874, P. L. 73, which absolves shareholders of a Pennsylvania title insurance and trust company from individual responsibility for its debts and is quoted at page 2, ante;

(b) Section 5 of the Act of May 13, 1876, P. L. 161, which imposes a personal responsibility upon shareholders of a Pennsylvania bank for its debts and is quoted at page 2, ante; and

(c) Section 3 of the Consolidation Act of May 3, 1909, P. L. 408, which provides that the rights, privileges and franchises of the constituent corporations are vested in the consolidated corporation and further provides that all rights of creditors and all liens upon the property of each constituent corporation shall continue unimpaired after consolidation, and that the constituent corporations may be deemed to be in existence to preserve the same, and which is quoted at page 3, ante.

The judgment sought to be reviewed was rendered on January 7, 1946 by the Supreme Court of Pennsylvania and is reported in **353 Pa. 345 (1946)**.

On March 15, 1945 a final judgment in the sum of \$2563.17 with interest was entered against your petitioner in the Court of Common Pleas of Luzerne County, Pennsylvania (R. 48). The entry of that final judgment was assigned as error on appeal to the Supreme Court of Pennsylvania (R. 49). On January 7, 1946 the Supreme Court of Pennsylvania affirmed the judgment in an opinion by Mr. Justice Stern (R. 1, 55) which did not remand the case

for further proceedings in the trial Court. Upon the expiration of the ten day period allowed for the filing of a petition for reargument, the Supreme Court of Pennsylvania issued on January 18, 1946 a remittitur to the Prothonotary of the Court of Common Pleas of Luzerne County, who on January 24, 1946 acknowledged the receipt and filing of the remittitur and record (R. 1). The judgment of affirmance of the Supreme Court of Pennsylvania is final and is therefore the one reviewable under Section 237 (b) of the Judicial Code.

The federal question was timely and properly raised and pressed at every stage of the proceedings before the Courts of Pennsylvania. Paragraphs 18 (c), (d) and (e), 22 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k), 24 (b), 28 (a) of your petitioner's affidavit of defense as defendant in the court below (R. 31-38) plead a violation of the 14th Amendment to the Constitution of the United States by the levying and collection of a stock assessment against your petitioner as a shareholder in the constituent Liberty State Bank and Trust Company. The decision of the trial court ruled that this federal question should be presented to an appellate court and not to the trial court (R. 44-45). The opinion of the Supreme Court of Pennsylvania considered the question of the violation of the 14th Amendment through the levy and collection of the stock assessment and concluded that your petitioner had not been unduly deprived of a property right or denied the equal protection of the laws in violation of the 14th Amendment (R. 54).

III. QUESTIONS PRESENTED.

1. Is the statutory exemption of shareholders of a Pennsylvania title insurance and trust company (i. e., Liberty State Bank and Trust Company) from personal liability for its debts a valuable property right which may not be impaired or destroyed without legislative authority and

which lies within the protection of the 14th Amendment to the Constitution of the United States?

2. Was the levying and collection of a stock assessment from those shareholders of the consolidated Pennsylvania Liberty Bank and Trust Company, who prior to the consolidation had been shareholders of the constituent Liberty State Bank and Trust Company and as such were free of individual liability, violative of the 14th Amendment because of the absence of any Pennsylvania statute imposing personal liability upon the shareholders of a new corporation resulting from the consolidation of a solvent Pennsylvania state bank and a solvent Pennsylvania title insurance and trust company?

3. Are the shareholders of the constituent title insurance and trust company estopped from setting up their statutory freedom from liability for a stock assessment because they voluntarily assented to the consolidation of their constituent corporation with a state bank, the shareholders of which are individually responsible for the latter's debts?

4. Did the legal existence of the constituent corporations continue after the consolidation for the settlement of their respective liabilities?

IV. REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The federal question of substance, which the Supreme Court of Pennsylvania has decided in a way probably not in accord with applicable decisions of this Court, is the right to levy and collect a stock assessment against a shareholder who by statute is free from individual responsibility for corporate debts. The gravamen of your petitioner's complaint is that he has been deprived of a valuable property right in violation of the 14th Amendment to the Constitution of the United States.

The Supreme Court of Pennsylvania seeks to justify this deprivation as a practical solution of a perplexing legal

problem. It challenges the right of your petitioner to complain that he has been unjustly deprived of a valuable property right and has been denied the equal protection of the laws upon the ground that he is now barred from raising this federal question through his voluntary entry, as a constituent shareholder, into a corporate consolidation.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of your Honorable Court, directed to the Supreme Court of Pennsylvania, commanding that Court to certify and to send to this Court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this case numbered and entitled on its Docket No. 141, January Term, 1945, William C. Freeman, Secretary of Banking of the Commonwealth of Pennsylvania, Receiver of *Pennsylvania Liberty Bank and Trust Company v. John P. Hudock*, Executor of the Estate of Michael G. Hudock, Deceased, appellant, and that said judgment of the Supreme Court of Pennsylvania may be reversed and that your petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And your petitioner will ever pray.

ROBERT T. McCracken,

GEORGE G. CHANDLER,

FRANK L. PINOLA,

Counsel for Petitioner.